

The Benefits of Mediation for Employers

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The sudden settlement of the Dominion Voting Systems defamation action against Fox News was secured by the last minute involvement of a private mediator. As reported by **The Washington Post**, mediator Jerry Roscoe worked with the parties' attorneys, by telephone and virtually, to get the case settled, remarkably, two days before trial was to begin. This resolution serves as a lesson that it is never too late for parties to reach a resolution to avoid a pending trial. It also serves as a reminder that money is not the only component to a settlement that a party should consider when trying to settle a case.

Often times, parties are so determined to go to trial that they forget the pitfalls. Per the article, Mr. Roscoe was able to get the parties to consider the monetary and non-monetary value of settlement. Dominion "was seeking accountability for Fox's role in spreading the false claim that Dominion [voting] machines had been used to steal the White House." This was a difficult position because many court settlements are confidential and include a statement of non-liability. On the other hand, Fox was facing a \$1.6 billion damages demand coupled with a trial in which its past "unvarnished, and often vicious, internal messages" would be recounted in open court. Clearly, both sides had a great risk going into trial. Mediation likely offered a reminder to Fox of the pending negative testimony, with Mr. Roscoe pointing out to Dominion the difficulty in claiming damages of \$1.6 billion dollars – a staggering figure.

In the end, Mr. Roscoe's mediation efforts prevailed. Fox is paying \$787.5 million (roughly half of \$1.6 billion), and Dominion has its public statement that Fox "acknowledged" that certain statements about Dominion were found by the Court to be "false." Neither side got what they wanted – complete vindication. However, both sides got what they needed – total resolution and trial avoidance.

Fox agreeing to issue the watered-down statement demonstrates the value of non-monetary settlement proposals, and that parties should think creatively to fashion such proposals when trying to resolve

disputes. This is certainly important in employment disputes, and these proposals can be made at mediation or at another time to avoid litigation.

For example, employers could consider offering a reference letter to a former employee, negotiated by the parties, to resolve a dispute or litigation. For those employers reluctant to praise a former employee in some circumstances, the promise of a neutral reference letter (dates of employment, salary/wage rate, and position/title) could prove valuable to help resolve litigation. Another option is to offer a former employee access to a job placement program, to be chosen by the employer. This can help the former employee address their most immediate concern in the event of termination: finding new employment.

On some occasions, a dispute arises over the violation of an employer's policy which an employee considers unfair. An employer could consider offering to revise the policy to placate the employee and avoid a continued dispute. On those occasions where meeting the settlement demand is necessary to avoid litigation, the employer could offer to pay the demand. However, the payment would be made over a period of time with, for example, monthly installment payments. This option would ease the pain of an immediate payment while still providing ultimate resolution.

Finally, an employer should never discount the positive effect of acknowledging a former employee's contributions to soothe hurt feelings. This statement can be made at mediation.

The Dominion/Fox settlement proves that even hardened adversaries can often find ways to resolve their disagreements and avoid costly and time consuming litigation. Employers should follow this example and consider mediation opportunities when faced with litigation.